



W.P.(MD)No.20161 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.12.2025**

CORAM

THE HONOURABLE **Mr. JUSTICE KRISHNAN RAMASAMY**

W.P.(MD)No.20161 of 2023

K.Jeevajoithi

...Petitioner

vs.

1.The Director,
Family Welfare,
DMS Complex,
Chennai - 600 006.

2.The District Collector,
Virudhunagar District,
Virudhunagar.

3.The Joint Director of Health Services,
Virudhunagar,
Virudhunagar District.

4.The Deputy Director,
Medical Rural Health Services and
Family Welfare,
Sivakasi Taluk,
Virudhunagar District.

5.The Medical Officer,
Government Hospital,
Thiruthangal,
Virudhunagar District.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus directing the respondents to pay Rs.10,00,000/- towards compensation to the petitioner for the medical negligence in



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performing the Family Planning Operation by the 5th respondent within the time stipulated by this Court.

For Petitioner : Mr.R.Karthic Rajan

For Respondents : Mr.K.Balasubramani,
Special Government Pleader

ORDER

This Writ Petition has been filed to direct the respondents to pay Rs. 10,00,000/- towards compensation to the petitioner for the medical negligence on the part of the fifth respondent in performing the family planning operation.

2. The learned counsel appearing for the petitioner would submit that in the present case, the Medical Officer at the fifth respondent Hospital conducted family planning operation on the petitioner on 14.05.2022. Even then, the petitioner got conceived. Therefore, according to him, the family planning operation was not done properly. The petitioner already has two children and is poor, and therefore, she opted for family planning. Now that again a female child is born to her, she is struggling to maintain all the children with the meagre income from her husband. Hence, the petitioner sent a representation to the respondents 1 to 4 on 20.05.2023 seeking compensation of Rs.10,00,000/-. He would submit that already a sum of Rs.



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60,000/- was awarded to the petitioner. He relied upon the decision of this Court in *The Secretary to Government, Health and Family Welfare Department, Fort St.George, Chennai - 600 009 and others vs. Dhanam* in W.A.No.2506 of 2022, dated 09.07.2024, and submitted that in a similar case, this Court has awarded a sum of Rs.3,00,000/- as compensation and hence, in the present case also similar orders may be passed.

3. The learned Special Government Pleader appearing for the respondents would submit that before performing the family planning operation, an agreement was entered to the effect that if the operation was not successful, then compensation would be paid in accordance with the relevant Rules and according to the Rules, the petitioner is entitled to only a sum of Rs.60,000/- and that has already been paid to the petitioner.

4. I have given due consideration to the submissions made on both sides.

5. In similar circumstances, this Court, in the case of *Dhanam vs. 1.The Secretary to Government, Health and Family Welfare Department, Fort St.George, Chennai - 600 009 and others* in W.P.No.22349 of 2018, dated 25.01.2022, has passed the following order.



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"13. In the instant case, the petitioner was not suffering from any disease for treatment of which she had gone to hospital authorities. She is a normal healthy person. She had approached the hospital authorities as she wanted to prevent birth of unwanted child. There was no question of error of judgment in performing the operation properly, it could have been simply a case of success. If in spite of this operation, she conceived and has given birth to a child, which establishes that it is clear case of something amiss while performing an operation and one can hopefully deduce that standard of reasonable care expected of the doctor was not taken.

14. It may be mentioned at the cost of repetition that in the counter affidavit the respondents have not at all stated that instead of taking reasonable care in performing sterilization operation and in spite operation being successful, there could be a conception. The respondents blamed the petitioner only to the extent she did not approach the hospital immediately after the stoppage of her menstrual periods so that the same could have been rectified. Therefore, the failure of the sterilization operation was not seriously disputed by the respondents and for such failure, the petitioner was even offered Rs.30,000/- as per the Scheme. This Court fails to understand as to how the negligence on the part of the Medical Officer who performed the sterilization operation on the petitioner, could be made good by just awarding Rs. 30,000/- irrespective of the status of the petitioner who does not wish to have child any more because the petitioner was



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already blessed with two female children and due to her poor financial ability and her incapacity to maintain the third child all along.

15. In such circumstances, the 3rd child is considered as “unwanted child” which had virtually taken birth only due to negligence on the part of the 3rd respondent in performing sterilization operation on the petitioner. Therefore, once the child was declared as unwanted child to the family of the petitioner, now the State has to bear the expenses in bringing up the "unwanted child" and it becomes the obligation of the State.

16. Family Planning is a National Programme. It is being implemented through the agency of various Govt. Hospitals and Health Centres. The implementation of the Programme is thus directly in the hands of the Govt. officers, including Medical Officers involved in the family planning programmes. The Medical Officers entrusted with the implementation of the Family Planning Programme cannot, by their negligent acts in not performing the complete sterilization operation, sabotage the scheme of national importance. The people of the country who cooperate by offering themselves voluntarily for sterilisation reasonably expect that after undergoing the operation, they would be able to avoid further pregnancy and consequent birth of additional child. As such, the petitioner also offered herself voluntarily for sterilization operation, however, the fate turns against her due to improper performance of the 3rd



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respondent in conducting the sterilization operation on the petitioner, by which, she gave birth to unwanted child. Therefore, this Court is of the view that the petitioner is certainly entitled to the compensation. However, taking into consideration the poor financial status of the petitioner who was already burdened with two female children and also lost the benefits under the scheme of the Government in respect of family consisting two female children, this Court feels it appropriate to award compensation including future cost of the child's upbringing upto the age of 21 years or until her graduation, on a consideration of public policy.

17. When the petitioner did not want third child as she and her husband had no economic means to bring up another child as already having two female child and when the third child was born because of failure of sterilization operation conducted on the petitioner by the respondents, who are the instrumentalities of the State, it becomes bounden duty of the state to meet the expenses for bringing up this child.

18. In a decision reported in the case of "State of Haryana versus Santra" ((2000) 5 SCC 182=2001-2-LW 58), while dealing with a case of birth of a child in spite of tubectomy operation. The Supreme Court held that there was negligence on the part of the Doctors and ultimately, the State Government was responsible for the negligence. The award of compensation by the Court below was upheld by the Supreme Court. Ultimately, it was observed:

"34. From the above, it would be seen that the Courts in



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the different countries are not unanimous in allowing the claim for damages for rearing the unwanted child born out of a failed sterilisation operation. In some cases, the Courts refused to allow this claim on the ground of public policy, while in many others, the claim was offset against the benefits derived from having a child and the pleasure in rearing that child. In many other cases, if the sterilisation was undergone on account of social and economic reasons, particularly in a situation where the claimant had already had many children, the Court allowed the claim for rearing the child."

....

" 37. Ours is a developing country where the majority of the people live below the poverty line. On account of the ever-increasing population, the country is almost at the saturation point so far as its resources are concerned. The principles on the basis of which damages have not been allowed on account of failed sterilisation operation in other countries either on account of public policy or on account of pleasure in having a child being offset against the claim for damages cannot be strictly applied to Indian conditions so far as poor families are concerned. The public policy here professed by the Government is to control the population and that is why various programmes have been launched to implement the State-sponsored family planning programmes and policies. Damages for the birth of an unwanted child may not be of



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any value for those who are already living in affluent conditions but those who live below the poverty line or who belong to the labour class, who earn their livelihood on a daily basis by taking up the job of an ordinary labour, cannot be denied the claim for damages on account of medical negligence."

.....

" 42. Having regard to the above discussion, we are positively of the view that in a country where the population is increasing by the tick of every second on the clock and the Government had taken up family planning as an important programme for the implementation of which it has created mass awakening for the use of various devices including sterilisation operation, the doctor as also the State must be held responsible in damages if the sterilisation operation performed by him is a failure on account of his negligence, which is directly responsible for another birth in the family, creating additional economic burden on the person who had chosen to be operated upon for sterilisation."

19. In view of the above discussion, this Court of the view that the petitioner is entitled to the compensation and keeping in view the economic and social background of the petitioner and other relevant circumstances, ends of justice would be met in providing the compensation of Rs.3,00,000/-. In addition to this, on attaining the age of five years, the respondents are directed to admit the 3rd child of the



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petitioner in a Government or private school. She would be provided with free education, i.e., no fee would be charged and all the school fee and other fees paid, shall be refunded by the respondents; all her expenses on books, stationary, uniforms and other miscellaneous educational expenses, would also be met by the respondents. Further, the respondents shall pay Rs. 1.2 lakhs per year to meet her needs for food and proper up-bringing till she completes her graduation or attaining 21 years, whichever is earlier, calculated @ Rs.10,000/- per month, amount under this head would be approximately Rs.1.2 lakhs. Further, the benefits granted by the Government under the female child scheme shall also be extended to the petitioner.

20. With the above direction, this Writ Petition is disposed of. No costs."

6. Against the above order, the respondents therein preferred an appeal in W.A.No.2506 of 2022 and this Court *vide* order dated 09.07.2024, has modified the order in Writ Petition to the extent below:-

"13. Accordingly, it is ordered as follows.

i) This writ appeal is partly allowed, by setting aside the order of the writ court, in so far as the payment of compensation of Rs.1,20,000/- per year (as stated supra). As far as the other aspects are concerned, the order of the writ court is confirmed, as the same is already complied with.

ii) Liberty is granted to the respondent to go before the civil court, seeking additional compensation in future, if she so



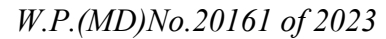
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advised, within two months from the date of receipt of a copy of this order.

iii) It is made clear that, if the respondent is approached the civil court, the observation made by this court will not bind the concern forum to decide the issue with regard to the payment of additional compensation and they have to take independent decision, on its own merits, without being influenced any one of the observations made by this court.

iv) It is also made clear that this order will not a precedent to any other cases in future, seeking such compensation, as ordered by the writ court."

7. In the above Writ Appeal, this Court has confirmed the compensation of Rs.3,00,000/- and also the free education ordered by the Writ Court. The law laid down by this Court in the above Writ Appeal is squarely applicable to the present case in view of the similar facts and circumstances. The petitioner herein is also entitled to the compensation and keeping in view the economic background and social background of the petitioner and other relevant circumstances and in the interest of justice, a sum of Rs.3,00,000/- is ordered as compensation. As Rs.60,000/- has already been paid by the respondents, the petitioner is now entitled to receive a sum of Rs.2,40,000/-. Further, as stated above, the third child is also entitled to free education.



(i) The respondents 1 to 4 are directed to pay a sum of Rs.2,40,000/-

(ii) In addition, on the third female child of the petitioner, attaining the age of 5 years, the respondents 1 to 4 are directed to admit her in a Government or Private school and shall provide her with free education i.e., no fee would be charged and all the school fee and other fees paid, shall be refunded by the respondents 1 to 4, all the expenses on books, stationary, uniforms and other miscellaneous educational expenses, would also be met by the respondents 1 to 4.

9. In light of the above order, this Writ Petition is disposed of. No costs.

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Speaking / Non-speaking order

Index : Yes/No

NCC : Yes/No

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To



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KRISHNAN RAMASAMY, J.



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